

REMARKS

Claims 8-20, 23-64, 66-67, 69-70 and 73-77 are pending in the Application.

Claims 38, 43-45 and 56 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Chen et al.* (U.S. Patent No. 5,751,791) in view of *O'Mahony* (U.S. Patent No. 5,878,120). Claim 38 has been amended to incorporate the limitations of claim 44. Applicants traverse the rejections of claims 38, 43-45 and 56.

Amended Claim 38 recites that "the throttling step further comprises the step of reducing a future amount of data from being transferred from the workstation if the amount of data exceeds a predetermined threshold." The Examiner rejects this claim limitation by taking Official Notice that it is well-known in the art of data flow control to reduce a future amount of data from being transferred from a workstation if the amount of data exceeds a predetermined threshold in order to prevent data congestion.

Applicants respectfully traverse the Examiner's taking of Official Notice. Official Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art, are capable of instant and unquestionable demonstration as being well-known. MPEP § 2144.03. Applicants respectfully assert that reducing a future amount of data from being transferred from a workstation if the amount of data exceeds a predetermined threshold is not capable of instant and unquestionable demonstration as being well-known. It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well-known are not capable of instant and unquestionable demonstration as being well-known. *Id.* Thus, Applicants respectfully assert that the Examiner must cite a prior art reference in support of the Examiner's taking of Official Notice.

The claims recite that data is throttled from the workstation to the telephone to increase a rate of transfer of the audio information during a step of communicating audio information between the telephone and a multimedia server, and this throttling further comprises reducing a future amount of

data from being transferred from the workstation if the amount of data exceeds a predetermined threshold. This is not well-known in the art. Furthermore, the claim specifically recites that such a throttling step, which further comprises the reducing step, is done to increase a rate of transfer of the audio information during a step of communicating audio information between the telephone and the multimedia server. It is not done in order to prevent data congestion, per se, contrary to the Examiner's assertion for why he is taking Official Notice. As a result of the foregoing, Applicants respectfully assert that Examiner has failed to assert a *prima facie* case of obviousness in rejecting amended claim 38.

With respect to claim 44, the Examiner has made the following assertion:

Regarding claims 44 and 45, *Chen* discloses monitoring an amount of audio information received by the telephone from the multimedia server (fig. 9, circuit 936 monitoring Rx voice buffer 932 via signal line 935 to control the data flow, col. 14, lines 50-60).

First, the references to Figure 9 are to the *O'Mahony* reference, and not to the *Chen* reference. This circuitry in *O'Mahony* does not monitor an amount of audio information being received by the telephone from the multimedia server. Instead, when the system in *O'Mahony* desires to send audio information, it suspends the data transmission in step 857 (Figure 8b), and then transmits a special character in step 859, which is recognized by circuit 936 in Figure 9. Thus, there is no monitoring of an amount of audio information being received by the telephone, but instead circuit 936 merely looks for the reception of the special character sent by circuit 924 from the other side. See col. 13, lines 11-22 of *O'Mahony*. See also col. 14, lines 53-61.

As a result, one skilled in the art at the time the invention was made would not have been able to arrive at the invention specifically recited in claim 44, since the combination of *Chen* and *O'Mahony* does not teach or suggest all of the claim limitation.

With respect to claim 45, the Examiner is apparently equating the recited jitter buffer with buffer 932 disclosed in *O'Mahony*. Applicants respectfully traverse. Claim 45 is dependent upon

claim 44, and further recites that the monitoring step further comprises the step of monitoring a predetermined level within a jitter buffer. Buffer 932 is not a jitter buffer, and further this buffer 932 does not monitor an amount of audio information being received. Instead buffer 932 is merely there to receive the voice data from mux 934 when circuit 936 detects the special character. Buffer 932 is just temporary storage for the received audio data. As a result, one skilled in the art at the time the invention was made would not have been able to recreate the invention specifically recited in claim 45, since the combination of *Chen* and *O'Mahony* does not teach or suggest these claim limitations.

Claims 39-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Chen* in view of *O'Mahony* and further in view of *Murphy* (U.S. Patent No. 6,856,613). In response, Applicants respectfully traverse these rejections. Since these claims depend on allowable claims, Applicants respectfully assert that these claims are also allowable over the cited prior art.

Claims 57-58 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Lee* in view of *O'Mahony*. These claims have been cancelled. Therefore, these rejections are moot.

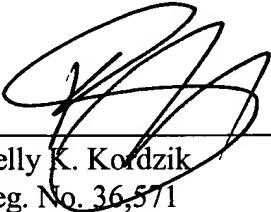
The Examiner has asserted that claims 73 and 74 are objected to as being dependant upon a rejected base claim. However, these claims are actually dependant upon allowable claims. Therefore these claims are allowable themselves.

In conclusion, as a result of the foregoing, Applicants respectfully assert that all of the claims in the application are now in condition for allowance.

Respectfully submitted,

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